

**SOAH DOCKET NO. 454-13-3561.M4
DWC FILE NO.**

TEXAS MUTUAL INSURANCE COMPANY,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
	§	OF
v.	§	
	§	
R J. C	§	
Respondent	§	ADMINISTRATIVE HEARINGS
(, D.C.,		

**DECISION AND ORDER GRANTING TEXAS MUTUAL INSURANCE COMPANY'S
MOTION FOR SUMMARY DISPOSITION**

Texas Mutual Insurance Company (Texas Mutual) has filed a Motion for Summary Disposition. Respondent, R J. C (, D.C., did not file a response. Texas Mutual seeks a refund order in the amount of \$7,321.90.

**I. JURISDICTION, NOTICE, PROCEDURAL HISTORY, AND FACTUAL
BACKGROUND**

No party challenged the propriety of jurisdiction and notice in this case. Therefore, those matters are set out in the findings of fact and conclusions of law without further discussion.

On November 18, 2010, Texas Mutual timely requested a refund of \$8,321.90 from Dr. C . Dr. C _ appealed the refund request on January 14, 2011, which was after the statutory deadline of 45 days to appeal. On February 28, 2011, Texas Mutual denied Dr. C _ untimely appeal, notice of which Dr. C _ received on March 2, 2011. On March 2, 2011, the Texas Department of Insurance, Division of Workers' Compensation (Division) reminded Dr. C _ of his obligation to refund the amounts requested. On March 30, 2011, Dr. C _ requested medical dispute resolution with the Division but did not submit the requested refunds to Texas Mutual as mandated under 28 Texas Administrative Code § 133.260.

On February 15, 2013, the medical fee dispute resolution section of the Division (MFDR) determined that Dr. C was not entitled to payment for the services but did not address Texas Mutual's refund request. Texas Mutual filed this appeal at the State Office of Administrative Hearings (SOAH) requesting a refund order.

In October 2011, Dr. C entered into an agreement with Texas Mutual to make monthly payments of \$1,000.00 beginning in January 2012 until the \$8,321.90 was paid in full. On January 26, 2012, Dr. C refunded \$1,000.00 to Texas Mutual. No other refunds have been made.

On June 17, 2013, Texas Mutual filed a motion for summary disposition. In its motion, Texas Mutual argues that it is entitled to payment from Dr. C as a matter of law. A motion for summary disposition is a request by a party for the ALJ to rule on all or part of the issues in a contested case without an evidentiary hearing. Dr. C did not file a response to the motion. No hearing was held on the motion for summary disposition. An order was issued on July 9, 2013, indicating that Dr. C did not file a response by the deadline of July 1, 2013, and canceling the hearing set for July 22, 2013. The record closed on July 9, 2013.

II. DISCUSSION

A. Applicable Law

An ALJ may issue a decision and order on all or part of a contested case without an evidentiary hearing if the evidence shows there is no genuine issue as to any material fact and a party is entitled to a decision in its favor as a matter of law.¹

¹ 1 Tex. Admin. Code § 155.505(a).

The Division has promulgated a refund rule, 28 Texas Administrative Code § 133.260. The rule permits a carrier to pursue a refund request up to 240 days from the date of service. The rule further requires that the health care provider respond to the carrier's request in one of two ways:

(c) A health care provider shall respond to a request for a refund from an insurance carrier by the 45th day after receipt of the request by:

(1) paying the requested amount; or

(2) submitting an appeal to the insurance carrier with a specific explanation of the reason the health care provider has failed to remit payment.

If the health care provider appeals the carrier's request, the carrier must respond to the appeal within 45 days. Importantly, if the insurance carrier denies the appeal, the health provider *must* refund the amount requested within 45 days and *may* request medical dispute resolution in accordance with Division rules.²

Consequently, the Division's dispute resolution rule recognizes that the health care provider may request medical fee dispute resolution when a refund is requested.³ Because Dr. C filed a request for dispute resolution on the basis of Texas Mutual's refund requests, the refund requests were squarely before the MFDR.

B. ALJ's Analysis

There are no disputed facts or legal issues in this case. The summary disposition evidence establishes that Texas Mutual is entitled to a refund in the amount of \$7,321.90. For these reasons, Texas Mutual's motion for summary disposition is granted, and Dr. C

² 28 Tex. Admin. Code § 133.260(e).

³ 28 Tex. Admin. Code § 133.307(b).

shall refund \$7,321.90 to Texas Mutual. In support of this determination, the ALJ makes the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

1. On November 18, 2010, Texas Mutual Insurance Company (Texas Mutual) timely and properly requested total refund of \$8,321.90 from R C , D.C. for services that were previously paid to treat injuries Texas Mutual disputed as noncompensable.
2. Dr. C received the refund request on November 19, 2010.
3. Dr. C appealed the refund request more than 45 days later, on January 14, 2011.
4. On February 28, 2011, Texas Mutual denied Dr. C 's untimely appeal.
5. Dr. C received Texas Mutual's appeal denial on March 2, 2011.
6. On March 2, 2011, the Texas Department of Insurance, Division of Workers' Compensation (Division) reminded Dr. C of his obligation to refund the amounts requested to Texas Mutual.
7. On March 30, 2011, Dr. C requested medical fee dispute resolution (MFDR) with the Division.
8. On April 15, 2011, Texas Mutual responded to the MFDR request and specifically requested a refund.
9. In October 2011, Dr. C entered into an agreement with Texas Mutual to make monthly payments of \$1,000.00 beginning in January 2012 until the \$8,321.90 was paid in full.
10. On January 26, 2012, pursuant to the agreement, Dr. C refunded \$1,000.00 to Texas Mutual.
11. Dr. C owes Texas Mutual a total remaining refund of \$7,321.90.

12. On February 15, 2013, in MFDR Tracking No. _____ the MFDR section of the Division issued the following Order:

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code § 413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

13. The order determined that Dr. C _____ was entitled to no reimbursement for the disputed services, but it failed to include an order of refund to Texas Mutual.
14. Texas Mutual timely requested a hearing on the MFDR decision.
15. The Division issued a notice of hearing on April 26, 2013. The notice of hearing informed the parties of the date, time, and location of the hearing; the matters to be considered; the legal authority under which the hearing would be held; and the statutory provisions applicable to the matters to be considered.
16. Texas Mutual filed a motion for summary disposition on June 17, 2013. Dr. C _____ did not file a response.
17. Texas Mutual's motion for summary disposition should be granted.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction to decide this matter. Tex. Lab. Code § 413.031; Tex. Gov't Code ch. 2003.
2. Adequate and timely notice was provided to Dr. C _____ Tex. Gov't Code §§ 2001.051 and 2001.052.
3. The pleadings and summary disposition evidence show that there is no genuine issue as to any material fact and that Texas Mutual is entitled to a decision in its favor as a matter of law. 1 Tex. Admin. Code § 155.505.
4. A health care provider shall respond to a request for a refund from an insurance carrier by the 45th day after receipt of the request for refund by paying the amount or submitting the appeal to the insurance carrier. 28 Tex. Admin. Code § 133.260(c).

5. If the insurance carrier denies the appeal, the health provider shall refund the money with interest within 45 days of receipt of notice and may request medical dispute resolution. 28 Tex. Admin. Code § 133.260(e).
6. Texas Mutual is entitled to reimbursement from Dr. C. _____ in the amount of \$7,321.90.

ORDER

IT IS ORDERED that Texas Mutual Insurance Company is entitled to additional reimbursement from F. C. _____ D.C. in the amount of \$7,321.90.

SIGNED August 28, 2013.

WENDY K. L. HARVEL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS